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4 BILL NO. G- 83-06-23
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6 GENERAL ORDINANCE NO. G-

7 AN ORDINANCE amending General Ordinance
8 No. G-27-77, by abolishing Article XII
9 of the Fort Wayne Cable Communications
10 System specifically entitled Cable
11 Television Program Advisory Council
Established and by substituting
therefor a new Article XII entitled
Cable Franchising Board and providing
penalties for violation of this ordinance

12 WHEREAS, the City of Fort Wayne, Indiana has on
13 July 26, 1977, duly passed General Ordinance No. G-27-77,
14 providing for the granting a non-exclusive cable communications
15 system in the City of Fort Wayne, Indiana, and granting
16 a franchise to construct and operate such system; and,

17 WHEREAS, said ordinance does not specifically
18 provide for penalties for distribution of obscene material
19 through a cable television system; and,

20 WHEREAS, said General Ordinance No. G-27-77,
21 does provide for a cable television advisory council which
22 council is without authority to enforce the provisions
23 of said ordinance; and,

24 WHEREAS, in view of the above it is necessary
25 to amend said General Ordinance No. G-27-77.

26 NOW THEREFORE BE IT ORDAINED BY THE COMMON
27 COUNCIL of the City of Fort Wayne, Indiana:

28 Section 1. That Article XII of General Ordinance
29 No. G-27-77, is hereby repealed in its entirety and the
30 following in the specifications attached and made a part
31 of General Ordinance No. G-27-77 is substituted therefor,
32 and the Common Council of the City of Fort Wayne, Indiana,
33 does approve, adopt, and ratify said substituted Article XII
34 a copy of which is attached hereto, made a part hereof by
35 reference in its entirety.

Section 2. That there is hereby added to said
General Ordinance No. G-27-77 the following:

1 (a) No person or operator of a franchise shall,
2 by means of a cable television system, knowingly
3 distribute by wire or cable to its' subscribers
4 or any other person any obscene material or
5 knowingly provide such material for distribution.

6 (1) "Distribute" shall mean send, transmit,
7 retransmit or otherwise pass or broadcast
through a cable television system.

8 (2) "Material" means any visual material
9 shown on a cable television system,
10 whether or not accompanied by a soundtrack,
or any sound recording played on a cable
television system.

11 (3) "Obscene Material" shall mean any material
12 depicting, displaying or otherwise
13 portraying sexual conduct in a manner
14 violative of federal, state or city laws
and ordinances regarding obscenity.
Material shall be deemed to be obscene if:

15 (i) The average person, applying
16 contemporary community standards,
17 would find that the dominant theme
of the material, taken as a whole,
appeals to a prurient interest in sex;

18 (ii) The material depicts or describes
19 sexual conduct in a patently offensive
way; and

20 (iii) The material, taken as a whole, lacks
21 serious literary, artistic, political
or scientific value.

22 (4) "Community Standards" shall mean the standards
23 of the community or vicinage encompassed
within the territorial area covered by the
franchise.

24 (5) "Sexual Conduct" shall have the meaning
25 ascribed to it in the Indiana Code, specifically
I.C. 35-30-10.1-1(d).

26 (b) Violation of the subsection (a) and the provisions
27 thereof by the operator of a cable television
28 system franchise shall be considered a material
29 breach of the franchising contract and a violation
30 of a material provision of this chapter.

31 (c) In the event of such a violation, the City of
32 Fort Wayne, Indiana, shall have the right to seek
the following sanctions:

- (1) An operator found to have knowingly violated subsection (a) shall be subject to a forfeiture penalty in an amount not greater than \$1,500 plus court costs;
- (2) An operator found to have previously violated subsection (a) shall be subject to a forfeiture penalty in an amount not greater than \$2,500 plus court costs, and shall be subjected to a suspension of the right to operate the franchise for a period not to exceed six (6) months;
- (3) In the event of a third or further violation of subsection (a), the City of Fort Wayne, Indiana shall have the right to seek a cancellation, termination and forfeiture of the franchise. The operator shall be entitled to notice and an opportunity for a hearing before the Common Council or its designated committee before the franchise may be terminated and cancelled. Termination of the franchise may only be effectuated where the operator has been adjudged liable within the review process set forth in subsection (a).

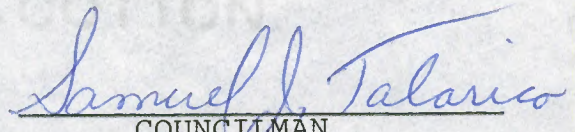
(d) Whether or not an operator has knowingly violated subsection (a) of this chapter is a matter to be determined by the Cable Franchise Board after a hearing. In order to pursue a violation of subsection (a), the City of Fort Wayne, Indiana, shall file a complaint with the Board and a copy shall be served upon the operator. All interested parties shall be entitled to notice within twenty (20) days prior to the hearing and will be permitted to introduce evidence and call witnesses to testify. The decision of a majority of the Board shall be a final judgment. The parties shall be entitled to judicial review of the Board decision.

(e) Any person or operator of a franchise who violates the provisions of subsection (a) shall be liable to the City of Fort Wayne, Indiana, for the expenses of litigation, including attorneys' fees and court costs, incurred by said city in defending sanctions, including the suspension or termination

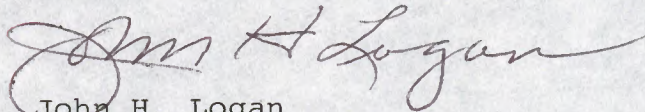
1 of the franchise or recision of the franchise
2 contract, in legal actions brought ^{against} the operator,
3 if judgment is rendered in favor of the city.

4 (f) In the event judgment is entered against the
5 operator in actions of the type stated in subsection
6 (a), the operator shall forthwith deposit the
7 amount of such expenses and costs with the city
8 controller of the Fort Wayne, Indiana, as are
9 determined to be reasonable by the Court, and
10 thereupon the controller shall hold such funds in
11 an account for the operator pending the outcome
12 of any appeals. The funds shall become the property
13 of said city in the event that judgment in favor
14 of said city is affirmed on final appeal.

15 Section 3. That this ordinance shall take effect from
16 and after its passage and approval by the Mayor and legal
17 publication thereof.

18 
19 COUNCILMAN
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25 Approved as to form and legality:

26 
27 John H. Logan
28 Attorney for the Common Council
29 of the City of Fort Wayne,
30 Indiana
31
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(1) To make recommendations to the Franchisee of the Cable Communications System and to the educational and governmental users of the educational and governmental access channels.

(2) To report methods that the Franchisee can make the public access channel available to all residents of the City on a non-discriminatory basis.

(3) To recommend and receive assurances that the operation of the public access channel be free of program censorship and control.

(4) To enforce the provisions of General Ordinance No. G-27-77 and any and all revisions and changes thereto.

(5) To perform such other duties and functions relative to the public access channel as may be appropriate.

(6) To make recommendations to the Franchisee on the procedural aspects of the public access channel.

C. Cable Franchise Board Rules and Procedures.

The Cable Advisory Franchise Board shall have the authority to submit proposed rules and regulations for the conduct of its business to the Mayor and Common Council for approval, and upon approval, shall have the right to hold hearings and make rulings affecting the Franchisee of the Cable Communications System and to the educational and governmental communities on the coordination of the educational and government access channels.

XII. CABLE FRANCHISE BOARD

A. Establishment of Cable Franchise Board. There is established a Cable Franchise Board consisting of nine (9) persons with two (2) members each representing the public, educational and governmental users and two (2) persons chosen at large to be representative of the community. Four (4) shall be appointed by the Mayor; four (4) by Common Council with the President of the Common Council or his designee as the ninth (9th) member. The first appointments shall be four (4) for a one (1) year term; four (4) for a two (2) year term; and thereafter all appointments shall be for two (2) year terms. It is recommended that four (4) initial appointments be representative of the four categories described - three (3) from the users and one (1) person at large.

At least two (2) weeks before any persons are appointed to the Cable Franchise Board, written applications from interested persons who are willing and able to serve on said Franchise Board shall be requested. Such applications shall clearly indicate the category that a person would be representing. In making appointments to said Franchise Board, the Mayor and Common Council shall consider the applications submitted by persons as well as such other persons as may come to the attention of the Mayor and Common Council as being qualified.

B. Cable Franchise Board. The Cable Franchise Board shall perform the following functions:

Read the first time in full and on motion by _____,
seconded by _____, and duly adopted, read the second time
by title and referred to the Committee _____ (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on _____, the _____ day of
_____, 19____, at _____ o'clock _____.M., E.S.T.

DATE: _____

CITY CLERK

Vote as to whether or not to introduce Ordinance
Read the third time in full and on motion by _____,
seconded by _____, and duly adopted, placed on its
passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	_____	_____	_____	_____	_____
<u>BRADBURY</u>	_____	✓	_____	<i>Pass</i>	_____
<u>BURNS</u>	✓	_____	_____	_____	_____
<u>EISBART</u>	_____	✓	_____	_____	_____
<u>GiaQUINTA</u>	_____	✓	_____	_____	_____
<u>SCHMIDT</u>	_____	✓	_____	_____	_____
<u>SCHOMBURG</u>	✓	_____	_____	_____	_____
<u>SCRUGGS</u>	_____	✓	_____	_____	_____
<u>STIER</u>	_____	✓	_____	_____	_____
<u>TALARICO</u>	✓	_____	_____	_____	_____

DATE: 6-28-83

- CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)
(APPROPRIATION) ORDINANCE (RESOLUTION) NO. _____
on the _____ day of _____, 19____.

ATTEST:

(SEAL)

CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the _____ day of _____, 19____, at the hour of
_____ o'clock _____.M., E.S.T.

CITY CLERK

Approved and signed by me this _____ day of _____
19____, at the hour of _____ o'clock _____.M., E.S.T.

WIN MOSES, JR. - MAYOR

Read the first time in full and on motion by _____,
seconded by _____, and duly adopted, read the second time
by title and referred to the Committee _____ (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on _____, the _____ day of
_____, 19____, at _____ o'clock _____.M.,E.S.T.

DATE: _____

CITY CLERK

Read the third time in full and on motion by _____,
seconded by _____, and duly adopted, placed on its
passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	_____	_____	_____	_____	_____
<u>BRADBURY</u>	_____	_____	_____	_____	_____
<u>BURNS</u>	_____	_____	_____	_____	_____
<u>EISBART</u>	_____	_____	_____	_____	_____
<u>GiaQUINTA</u>	_____	_____	_____	_____	_____
<u>SCHMIDT</u>	_____	_____	_____	_____	_____
<u>SCHOMBURG</u>	_____	_____	_____	_____	_____
<u>SCRUGGS</u>	_____	_____	_____	_____	_____
<u>STIER</u>	_____	_____	_____	_____	_____
<u>TALARICO</u>	_____	_____	_____	_____	_____

DATE: _____

- CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)
(APPROPRIATION) ORDINANCE (RESOLUTION) NO. _____
on the _____ day of _____, 19____.

ATTEST:

(SEAL)

CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the _____ day of _____, 19____, at the hour of
_____ o'clock _____.M.,E.S.T.

CITY CLERK

Approved and signed by me this _____ day of _____
19____, at the hour of _____ o'clock _____.M.,E.S.T.

WIN MOSES, JR. - MAYOR